

GENERAL FEDERAL AND STATE INFORMATION

Section 301(a) of the Clean Water Act (CWA), 33 USC 1311(a), prohibits the discharge of pollutants to waters of the United States in the absence of authorizing permits, including National Pollutant Discharge Elimination System (NPDES) permits. The Maryland Department of Environment (MDE) is the State agency with the authority to administer the federal NPDES Program in Maryland pursuant to Section 402 of the Clean Water Act, 33 USC 1342. The United States Environmental Protection Agency (EPA) maintains concurrent enforcement authority with authorized states for violations of the CWA.

Code of Maryland Regulations (COMAR) 26.08.03.09B(1) incorporate by reference the federal Concentrated Animal Feeding Operations (CAFO) requirements. COMAR 26.08.04.09N(3) includes public participation requirements thus providing consistency with the new federal requirements regarding Nutrient Management Plans (NMPs). Maryland's General Discharge (GD) Permit requires a required plan defined in COMAR 26.08.04.09N(3)(b) as a Comprehensive Nutrient Management Plan (CNMP), Nutrient Management Plan (NMP), or Soil Conservation and Water Quality Plan ("conservation plan") (the "required plan") for CAFOs and MAFOs to comply with the federal requirements for a NMP.

Maryland GD Permit requirements and procedures are consistent with the applicable federal requirements and procedures. The federal regulations at 40 CFR 122 and 412 provide the minimum requirements for compliance with Maryland's implementation of the federal CAFO Program.

The GD Permit implements the discharge requirements for those CAFOs and MAFOs that are required to obtain a permit under federal regulations (and other facilities that require a permit under State regulations). For those animal feeding operations (AFOs) that do not otherwise require permits under federal or State regulations, COMAR 26.08.03.09 identifies applicable requirements.

Under the CWA, the Permitting Authority may issue general permits to regulate facilities which have similar discharges and are subject to the same conditions and limitations within a specified geographic area [40 CFR 122.28]. Using general permits conserves resources and reduces the paperwork burden associated with obtaining discharge authorization for both the regulated community and the Permitting Authority.

MDE has determined that a general permit is the appropriate mechanism to address the majority of CAFOs and MAFOs in Maryland that are subject to the requirements of the State NPDES Program and the CWA.

Supplementary information in this Fact Sheet is organized as follows:

- I. Modifications to existing GD Permit
- II. GD Permit Area and Coverage
- III. Effluent Limitations and Standards

- IV. Special Conditions
- V. Annual Report
- VI. Standard GD Permit Conditions

I. MODIFICATIONS TO EXISTING GD PERMIT

A. General

Throughout the GD Permit, requirements not applicable to this round of the GD Permit have been removed. In addition, based on the Department's experience with the existing GD Permit, language was adjusted to be more consistent and clear.

B. Primary Modifications

1. Part IA5: Clarification of "Certification of Conformance" (Page 2) – This section has been re-written to clarify this requirement.
2. Part IVA6: Logbooks/Recordkeeping (Pages 12, 13, and 14) - This section was expanded to clarify recordkeeping requirements for both land and no-land operations in fulfillment of the recordkeeping requirement of 40 CFR Part 122.42(e)(1)(ix).
3. Part IIIA2/Part IIIB2/Part IVA1: Removal of the CAFO-only requirement to fulfill the application requirement to submit a NMP and Conservation Plan by the submission of a CNMP (Pages 7, 8, and 10) – CAFOs will now have the same requirements as MAFOs – to submit either a CNMP or a combination of a NMP and Conservation Plan – “the required plan” provided that it complies with the requirements in COMAR 26.08.04.09N(3)(b) and the federal regulations in 40 CFR Part 122.42(e)(1). These regulations address the requirement of the nine minimum standards to protect water quality. This requirement is at least as stringent as the current GD Permit and will result in AFOs being able to obtain and make updates to plans.
4. Part IIIF: Removal of explanation of when fee is deemed paid and relation to effective date of payment (Page 10) – The deleted provision is not necessary and is related to internal MDE business operations rather than a condition to discharge.
5. Part IIIB5: Required plan incorporation into permit (Page 8) – This section reinforces that requirements in required plan are also permit terms as required by federal regulations, 40 CFR Part 122.42(e)(5).
6. Part IIIC: Addition of NOI requirement for “the total square footage of all poultry houses” (Page 9) – This information is necessary to determine whether an operation that has no discharge may apply for a Certification of Conformance or must apply for coverage under the GD Permit as a MAFO.
7. Part IVA(1)(a)(3): Requirement for the NMP to be prepared by a certified and licensed nutrient management consultant (Page 11) – This Section is required to comply with COMAR 15.20.04, 15.20.07 and 15.20.08.

8. Part IVB(6)(a)/Part IVB(8)(a): Clarification of existing permit requirement that field ditches are included in the setback requirement of standard 6 of the nine minimum standards (Pages 14 and 15) – This Section clarifies the existing provision.
9. Part IVD2 to Part IVA(6)(b)(4) and Part IVA(7)(a)(v): Move of weekly animal waste storage and storm water routing structure inspection requirement from Page 16 to Pages 13 and 14. – This is a clarification of the existing requirements. Current permit requires these inspections, but not documentation of the inspections.
10. Part IVF: Clarification of the obligations of permittees when they modify their operation. Requirements are split into those that require a new NOI and those that require only notification (Page 17) – A new NOI will be required for all substantial modifications to operations.
11. Part VC(2)(b)/Part VC(2)(c): Reduction of the requirement to collect waste generated data and field-specific land application data from per month to per year, to be reported on the annual report (Page 19) – This provision is to make permit requirements consistent with industry practices.
12. Part VIIIB: Addition of “United States Environmental Protection Agency” under the “Right of Entry” general condition (Page 22) – This provision was added at EPA’s request.
13. Part VIIH: Addition of a statement that the Department may impose additional requirements on the permittee by the Oil Control Program and Emergency Planning and Community Right to Know Act (Page 23). – This provision was added to address other requirements that may be applicable to AFOs.
14. Part VIIK: Added statement/text requiring the permittee to implement BMPs required to satisfy the Chesapeake Bay Watershed Implementation Plan (WIP) and reserving the right of the Department to impose additional BMPs to minimize phosphorus and nitrogen transport (page 24). – This provision was added per EPA’s request.

II. PERMIT COVERAGE

A. GD Permit Coverage

This GD Permit provides coverage for any eligible operation that discharges or “proposes to discharge” pollutants and meets the definition of a CAFO at 40 CFR 122.23 and of a MAFO at COMAR 26.08.01.01B(42-1). CAFOs are point sources subject to the NPDES permitting program. A permit is required for any CAFO that discharges or proposes to discharge pollutants to surface waters of the United States [40 CFR Part 122.21(a) and 122.23(d)(1)] and surface waters of the State [COMAR 26.08.03.09B(3)]. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge to surface waters of the State will occur. MAFOs are AFOs that are not CAFOs and meet the COMAR definition and are designed, constructed, operated, and maintained such that a discharge will not occur. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes [COMAR 26.08.03.09A(2)(b)].

B. Eligibility for Coverage

The GD Permit is required to fulfill the NPDES permitting requirements of 40 CFR 122.28(a) and the permitting requirements under COMAR 26.08.04.01. Eligible CAFOs and MAFOs may apply for authorization to discharge under the terms and conditions of this GD Permit by submitting a Notice of Intent (NOI) to be covered by this GD Permit.

C. Limitations on Coverage

In accordance with 40 CFR 122.28(a)(4)(ii), the general permit may exclude specified sources or areas from coverage. Large Category Duck CAFOs are excluded from coverage under this GD Permit and are required to obtain coverage under an individual permit.

D. Application for Coverage

Any large or medium AFO that is required to seek permit coverage must seek coverage as a CAFO when the AFO “proposes to discharge” [COMAR 26.08.03.09B(1)(c)] or if it actually discharges [40 CFR 122.23(f)]. MAFOs are required to seek permit coverage if they meet the COMAR definition of MAFO [COMAR 26.08.01.01B(42-1)]. Consistent with requirements under 40 CFR Parts 122.21(i)(1)(x) and 122.28(b)(2), and COMAR 26.08.03.09B(3) and C(1), owners or operators of CAFOs and MAFOs, respectively, seeking coverage under this GD Permit must submit a signed copy of the Department’s AFO NOI Form and required plans to MDE. Upon receipt, MDE will review the NOI and required plans to ensure that all application and permit requirements are fulfilled. MDE may request additional information from the CAFO or MAFO owner or operator if additional information is necessary to complete the NOI or required plan.

If MDE determines that the NOI is complete, MDE will prepare a preliminary approval. The NOI, and required plan, which address the nine minimum standards for water quality protection, will be made available at the MDE’s office and a library near the AFO for a 30 calendar day public review and comment period, and information regarding the NOI will be posted on MDE’s website at www.mde.maryland.gov. MDE will respond to comments received during this period and, if necessary, require the CAFO or MAFO owner or operator to revise the required plan. The public may request a hearing during the first 20 calendar days of a CAFO comment period [COMAR 26.08.04.09N(k)(i)]. The Department will provide the public with 30 calendar days notice prior to the date of the hearing. A public hearing for a MAFO may be scheduled at the Department’s discretion. [COMAR 26.08.04.09N(k)(ii)].

At the end of this process, the preliminary approval becomes a final approval and the applicant will be granted coverage under this GD Permit only upon written notification by MDE. The Department will provide public notice and persons adversely affected an opportunity to request a contested case hearing on the content of the required plan(s) for 15 calendar days. If no request is made, the applicant will be registered under the GD Permit. Upon final approval, the terms and conditions of the required plan are enforceable under the terms and conditions of the GD Permit [COMAR 26.08.04.09N(3)(1)(iv)].

E. Requiring an Individual Permit

In accordance with 40 CFR Part 122.28(b)(3)(i) and COMAR 26.08.04.09N(1)(a), MDE may determine that providing coverage under this GD Permit is not adequate for a particular CAFO



and may require the facility to obtain an individual NPDES Permit.

F. Continuation of this Permit

In accordance with 40 CFR Part 122.46(a) and COMAR 26.08.04.08E, this GD Permit has a term of five years from the effective date. If this GD Permit is not reissued or replaced prior to the expiration date and the applicant has submitted a timely and complete reapplication, it will be administratively extended in accordance with 40 CFR 122.6 and COMAR 26.08.04.06A(3) and the terms and conditions of the existing permit will continue and will remain in full force and effect.

III. RATIONALE FOR EFFLUENT LIMITATIONS AND STANDARDS

A. Production Areas

Under the terms and conditions of this GD Permit, large and medium CAFOs are required to meet the requirements of the effluent guidelines found at 40 CFR 122.42(e)(1)(i), 412.31 and 412.43. Limitations for medium CAFOs are based on 40 CFR 412 for large CAFOs. MAFOs are required to meet the requirements in COMAR 26.08.03.09C(5) and the general and MAFO-specific requirements in the GD Permit. This GD Permit requires that the production area of the CAFO and MAFO must also comply with the requirements of 40 CFR 412.37(a) and (b). Areas within the production area not specifically included in the definition of production area, i.e. the areas between the poultry houses, are subject to best professional judgment limitations.

Outdoor storage piles of manure at any location at a CAFO or MAFO fall within the federal and State definition of a production area and are therefore subject to the GD Permit requirements of no discharge consistent with 40 CFR Part 412 for CAFOs and in the GD Permit for MAFOs. Additional requirements apply to manure piles stored more than 14 calendar days in the field for CAFOs and more than 30 calendar days in the field for MAFOs.

B. Land Application Areas

The GD Permit requirements to develop and implement a NMP for land application areas are based upon requirements found at 40 CFR 412.4(c), 40 CFR 122.42(e), and 412.37(c) and COMAR 15.20.07 and .08. Large CAFOs that spray irrigate are subject to both federal NPDES and State groundwater regulatory requirements. Any AFO that spray irrigates is regulated under this GD Permit [COMAR 26.08.03.09E].

Prohibitions regarding field application of animal waste in certain weather conditions are specified under Part IV.A.4 of the GD Permit. Other required plan requirements for land application of animal waste are included in Part IV.B.8 of the GD Permit, including following protocols required in the Maryland Department of Agriculture (MDA) regulation in COMAR 15.20.07 and 15.20.08. While some, but not all, of the requirements applicable to land application of animal waste were repeated in Part IV.C.2 as a means of emphasis, the purpose of Part IV.C is to establish additional operational parameters for liquid discharges to groundwater via automated spray irrigation systems as defined in Definition II of the GD Permit. The exception process for animal waste in Part IV.A.4, which includes process wastewater, remains applicable to the process wastewater referenced in Part IV.C.2. of this GD Permit.



IV. SPECIAL CONDITIONS

A. Required Plan

1. Schedule: AFOs seeking coverage under this GD Permit must submit the completed required plan to MDE along with the NOI. The permittee shall implement its required plan and modify it as necessary upon authorization under this GD Permit in accordance with 40 CFR 122.23(h) and COMAR 26.08.03.09B(1).
2. Required Plan Review and Terms: Each permittee must develop, submit with its NOI, and implement a site specific required plan. The required plan must comply with the requirements in COMAR 26.08.04.09N(3)(b) and federal regulations in 40 CFR 122.42(e). The required plan must specifically identify and describe the practices that will be implemented to assure compliance with the effluent limitations and special conditions in this GD Permit. The GD Permit requires a plan consistent with all requirements of MDA regulation in COMAR 15.20.07 and 15.20.08 and federal effluent guidelines at 40 CFR 412.31. In addition, condition Part IV.B of the GD Permit requires the permittee's required plan to comply with the nine minimum standards, which are listed in 40 CFR 122.42(e)(1), and enumerated in the GD Permit. The GD Permit requires that the required plan be developed based upon Natural Resources Conservation Service (NRCS) National Planning Procedures Handbook, Part 600.5, Amendment 4, March 2003, including Part 600.53 of the Handbook which requires the following:

“Meet all applicable local, Tribal, State, and Federal regulations. When applicable, ensure that USEPA-NPDES or State permit requirements (i.e., minimum standards and special conditions) are addressed.”

3. Any effluent guideline requirements not currently addressed in NRCS standards have been included in this GD Permit. For example, conservation practice 634 for manure transfer does not, at this time, require that an AFO provide the recipient with a nutrient analysis. Instead, that federal requirement is specifically listed as one of this GD Permit requirements at Part IV.A(7), and is also one of the nine minimum standards for record keeping (IV.B(9)). Upon receipt of the required plan, MDE will review the required plan. MDE can request additional information if needed. MDE will use the required plan to identify site-specific permit terms and conditions. The enforceable terms and conditions of the required plan are incorporated by reference into the GD Permit. [40 CFR 122.23(h)]. MDE will identify the enforceable terms and conditions of the CNMP and make that determination subject to public comment consistent with federal rules and COMAR 26.08.04.09N(3)(i) and (3)(l).

Once the NOI and required plan are complete and have been reviewed by MDE, MDE will notify the public of MDE's preliminary approval to grant coverage under this GD Permit. MDE will publish the NOI submitted by the CAFO or MAFO, including the CAFO's or MAFO's required plan, on the MDE website (www.mde.maryland.gov). The notice will also provide the opportunity to request a public hearing on the NOI and the required plan for CAFOs in accordance with 40 CFR 124.11 and 12. The public is provided 30 calendar days to comment and request a public hearing on MDE's preliminary approval of the NOI and required plan for CAFOs. MAFOs do not have the opportunity for a public hearing, but only the public comment period. MDE will respond



to comments and can require revision of the required plan, if necessary. [(40 CFR 122.23(h)] A public hearing will be scheduled after 30 calendar day notice if requested within the first 20 calendar days of the public comment period. The preliminary approval becomes a final approval once all comments have been addressed. The public is provided 15 calendar days from publication of the final notice for persons adversely affected to request a contested case hearing on the content of the required plan(s). [COMAR 26.08.04.09N(l)(ii)]

MDE will notify the applicant coverage as a CAFO or MAFO that coverage under this GD Permit has been authorized and of the applicable terms and conditions of this GD Permit. When MDE authorizes coverage under this GD Permit, the terms and conditions of the required plan are incorporated by reference into the terms and conditions of this GD Permit for the CAFO. [40 CFR 122.23(h)]

4. Required Plan Content: The proposed renewal of the GD Permit specifies that each required plan must, at a minimum, include practices and procedures necessary to implement the applicable effluent limitations and standards. In addition, each required plan must meet measures required under 40 CFR 122.42(e)(1)(i-ix), and specified in the GD Permit. These requirements include the following:
 - a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. [40 CFR 122.42(e)(1)(i)].
 - b. Ensure that clean water is diverted, as appropriate, from the production area. [40 CFR 122.42(e)(1)(iii)].
 - c. Ensure that chemicals and other contaminants handled on-site are not disposed in any manure, litter, process wastewater, or storm water storage or treatment system unless that system is specifically designed to treat such chemicals or contaminants. [40 CFR 122.23(1)(v)].
 - d. Identify appropriate site specific conservation practices to be implemented, including, as appropriate, buffers, or equivalent practices to control runoff of pollutants to waters of the State and specifically, to minimize the runoff of nitrogen and phosphorus. [40 CFR 122.23(1)(vi)].
 - e. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil. [40 CFR 122.23(1)(vii)].
 - f. Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. [40 CFR 122.23(1)(viii)].
 - g. MDE may accept application rates expressed in required plans consistent with the Linear Approach or the Narrative Rate Approach provided in 40 CFR 122.42(e)(5). Both of these approaches have been incorporated by reference in COMAR 26.08.03.09B(1) to provide Maryland the authority to allow for either approach in the development of a required plan. Current NMP practices in Maryland rely upon the Linear Approach. To the extent that those practices begin to rely on a Narrative Rate Approach they will be required to be consistent with 40 CFR 122.42(e)(5)(ii).



- i. CAFOs and MAFOs that use the Linear Approach must calculate, at least once each year, the maximum amount of manure, litter, and process wastewater to be land applied using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; [40 CFR 122.42(e)(5)(i)].
 - ii. The “Narrative Rate Approach” expresses the field-specific rate of application as a narrative rate prescribing how to calculate the amount of manure, litter, and process wastewater allowed to be applied. CAFOs and MAFOs that use the Narrative Rate Approach must calculate, at least once each year, the maximum amounts of manure, litter, and process wastewater to be land applied using the methodology required in 40 CFR 122.42(e)(5)(ii) before land applying manure, litter, and process wastewater.
 - h. Identify and maintain all records necessary to document the development and implementation of the required plan and compliance with this GD Permit. [40 CFR 122.42(e)(5)(ix)].
5. Signature: The required plan must be signed by the applicant (owner/operator) or other signatory authority in accordance with the Signatory Requirements of this GD Permit. [40 CFR 122.41(k)].
6. Required Plan Retention: A current copy of the required plan must be kept on-site at the permitted facility in accordance with Part IV.C of the GD Permit and provided to the permitting authority upon request. [40 CFR 412.37(c)].
7. Changes to the Required Plan:
- a. This GD Permit allows for a CAFO or MAFO owner/operator or operator to make changes to its required plan. When a CAFO or MAFO owner/operator or operator covered by this GD Permit makes changes to their required plan previously approved by MDE, the CAFO or MAFO owner/operator or operator must provide MDE with the most current version of the CAFO's or MAFO's required plan and identify changes from the previous approved version. [40 CFR 122.42(e)(6)(i)].
 - b. MDE will review the revised required plan. If MDE determines that the changes to the required plan require revision of the terms or conditions of the required plan incorporated into the permit issued to the CAFO or MAFO, MDE will then determine whether such changes are significant/substantial. [COMAR 26.08.04.09N(3)/40 CFR 122.42(e)(6)(ii)] Substantial changes to the terms of a required plan incorporated as terms and conditions of a permit include, but are not limited to:
 - i. Addition of new land application areas not previously included in the CAFO's or MAFO's required plan, except that if the added land application area is covered by the terms of a required plan incorporated into an existing NPDES permit and the permittee complies with such terms when applying manure, litter, and process wastewater to the added land [40 CFR 122.42(e)(6)(iii)(A)];



- ii. For required plans using the Linear Approach, changes to the field-specific maximum annual rates of land application (pounds of N and P from manure, litter, and process wastewater). For required plans using the Narrative Rate Approach, changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop [40 CFR 122.42(e)(6)(iii)(B)];
 - iii. Addition of any crop or other uses not included in the terms of the CAFO's or MAFO's required plan [40 CFR 122.42(e)(6)(iii)(C)]; and
 - iv. Changes to site specific components of the CAFO's or MAFO's required plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the U.S. [40 CFR 122.42(e)(6)(iii)(D)]
- c. If the changes to the terms or conditions of the required plan are not significant/substantial, MDE will include the revised required plan in the CAFO's record and notify the permittee and the public of any changes to the terms or conditions of this GD Permit based on revisions to the required plan. [40 CFR 122.42(e)(6)(ii)(A)]
- d. This GD Permit requires that significant/substantial changes be subject to the public participation requirements of permit Section III.C.3 (see also COMAR 26.08.04.09N(3)) of this GD Permit. If MDE determines that the changes to the terms or conditions of the required plan are significant/substantial, MDE will notify the public, make the proposed changes, and make the information submitted by the CAFO or MAFO owner/operator or operator available for public review and comment. MDE will also respond to all comments received during the comment period. MDE may require the permittee to further revise the required plan, if necessary. Once MDE incorporates the revised terms and conditions of the required plan into this GD Permit, MDE will notify the permittee of the revised terms and conditions of this GD Permit. [40 CFR 122.42(e)(6)(ii)(B)]
8. Certified Specialists to Develop required plans: Although a certified specialist may be used, CAFO and MAFO owners/operators or operators are solely responsible for assuring their required plans comply with all the terms and conditions of this GD Permit and are properly implemented.

B. Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons

Under the GD Permit, where CAFO/MAFO-generated manure, litter, or process wastewater is sold or given away, the permittee must comply with specific requirements that document the transfer and promote proper management. [40 CFR 122.42(e)(3)].

V. ANNUAL REPORTING

Under this GD Permit, the permittee must submit an annual report to MDE. By March 1 of every year, each CAFO must submit to the Department an annual report on a form provided by MDE. By March 1 of every year, MAFOs must submit an annual report equivalent to the annual report submitted to MDA. The requirements and criteria for the annual report are specified in this GD Permit and in 40 CFR 122.42(e)(4).



Annual reporting requirements include applicable federal requirements and State requirements.

VI. STANDARD CONDITIONS

The GD Permit incorporates the standard conditions applicable to permits issued under Maryland's NPDES Program. These conditions consist of: general conditions, operation and maintenance requirements, monitoring and records, reporting requirements, signatory requirements, certification, availability of reports, and penalties for violations of permit conditions (consistent with both federal and State penalty requirements).

